
Introduced by Senator Roth

January 12, 2016

An act to amend Section 273.5 of the Penal Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 870, as introduced, Roth. Domestic violence.

Existing law makes it a crime, punishable by a fine, by imprisonment, or by both a fine and imprisonment, for a person to willfully inflict corporal injury resulting in a traumatic condition upon a person with whom the defendant has been in a specified domestic relationship.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 273.5 of the Penal Code is amended to
2 read:
3 273.5. (a) ~~Any~~ Every person who willfully inflicts corporal
4 injury ~~resulting that results~~ in a traumatic condition upon a victim
5 described in subdivision (b) is guilty of a felony, and upon
6 conviction thereof shall be punished by imprisonment in the state
7 prison for two, three, or four years, or in a county jail for not more
8 than one year, or by a fine of up to six thousand dollars (\$6,000),
9 or by both that fine and imprisonment.
10 (b) Subdivision (a) ~~shall apply~~ *applies* if the victim is or was
11 one or more of the following:

1 (1) The offender's spouse or former spouse.

2 (2) The offender's cohabitant or former cohabitant.

3 (3) The offender's fiancé or fiancée, or someone with whom
4 the offender has, or previously had, an engagement or dating
5 relationship, as defined in paragraph (10) of subdivision (f) of
6 Section 243.

7 (4) The mother or father of the offender's child.

8 (c) Holding oneself out to be the husband or wife of the person
9 with whom one is cohabiting is not necessary to constitute
10 cohabitation as ~~the~~ *that* term is used in this section.

11 (d) As used in this section, "traumatic condition" means a
12 condition of the body, such as a wound, or external or internal
13 injury, including, but not limited to, injury as a result of
14 strangulation or suffocation, whether of a minor or serious nature,
15 caused by a physical force. For purposes of this section,
16 "strangulation" and "suffocation" include impeding the normal
17 breathing or circulation of the blood of a person by applying
18 pressure on the throat or neck.

19 (e) For the purpose of this section, a person shall be considered
20 the father or mother of another person's child if the alleged male
21 parent is presumed the natural father under Sections 7611 and 7612
22 of the Family Code.

23 (f) (1) ~~Any~~ Every person convicted of violating this section for
24 acts occurring within seven years of a previous conviction under
25 subdivision (a), or subdivision (d) of Section 243, or Section 243.4,
26 244, 244.5, or 245, shall be punished by imprisonment in a county
27 jail for not more than one year, or by imprisonment in the state
28 prison for two, four, or five years, or by both imprisonment and a
29 fine of up to ten thousand dollars (\$10,000).

30 (2) ~~Any~~ Every person convicted of a violation of this section
31 for acts occurring within seven years of a previous conviction
32 under subdivision (e) of Section 243 shall be punished by
33 imprisonment in the state prison for two, three, or four years, or
34 in a county jail for not more than one year, or by a fine of up to
35 ten thousand dollars (\$10,000), or by both that imprisonment and
36 fine.

37 (g) If probation is granted to ~~any~~ a person convicted under
38 subdivision (a), the court shall impose probation consistent with
39 the provisions of Section 1203.097.

1 (h) If probation is granted, or the execution or imposition of a
2 sentence is suspended, for ~~any~~ a defendant convicted under
3 subdivision (a) who has been convicted of ~~any~~ a prior offense
4 specified in subdivision (f), the court shall impose one of the
5 following conditions of probation:

6 (1) If the defendant has suffered one prior conviction within the
7 previous seven years for a violation of ~~any~~ an offense specified in
8 subdivision (f), it shall be a condition of probation, in addition to
9 the provisions contained in Section 1203.097, that he or she be
10 imprisoned in a county jail for not less than 15 days.

11 (2) If the defendant has suffered two or more prior convictions
12 within the previous seven years for a violation of ~~any~~ an offense
13 specified in subdivision (f), it shall be a condition of probation, in
14 addition to the provisions contained in Section 1203.097, that he
15 or she be imprisoned in a county jail for not less than 60 days.

16 (3) The court, upon a showing of good cause, may find that the
17 mandatory imprisonment required by this subdivision shall not be
18 imposed and shall state on the record its reasons for finding good
19 cause.

20 (i) If probation is granted upon conviction of a violation of
21 subdivision (a), the conditions of probation may include, consistent
22 with the terms of probation imposed pursuant to Section 1203.097,
23 in lieu of a fine, one or both of the following requirements:

24 (1) That the defendant make payments to a battered women's
25 shelter, up to a maximum of five thousand dollars (\$5,000),
26 pursuant to Section 1203.097.

27 (2) (A) That the defendant reimburse the victim for reasonable
28 costs of counseling and other reasonable expenses that the court
29 finds are the direct result of the defendant's offense.

30 (B) For ~~any~~ an order to pay a fine, make payments to a battered
31 women's shelter, or pay restitution as a condition of probation
32 under this subdivision, the court shall make a determination of the
33 defendant's ability to pay. An order to make payments to a battered
34 women's shelter shall not be made if it would impair the ability
35 of the defendant to pay direct restitution to the victim or
36 court-ordered child support. If the injury to a married person is
37 caused in whole or in part by the criminal acts of his or her spouse
38 in violation of this section, the community property may not be
39 used to discharge the liability of the offending spouse for restitution
40 to the injured spouse, required by Section 1203.04, as operative

1 on or before August 2, 1995, or Section 1202.4, or to a shelter for
2 costs with regard to the injured spouse and dependents, required
3 by this section, until all separate property of the offending spouse
4 is exhausted.

5 (j) Upon conviction under subdivision (a), the sentencing court
6 shall also consider issuing an order restraining the defendant from
7 any contact with the victim, which may be valid for up to 10 years,
8 as determined by the court. It is the intent of the Legislature that
9 the length of any restraining order be based upon the seriousness
10 of the facts before the court, the probability of future violations,
11 and the safety of the victim and his or her immediate family. This
12 protective order may be issued by the court whether the defendant
13 is sentenced to state prison or county jail, or if imposition of
14 sentence is suspended and the defendant is placed on probation.

15 (k) If a peace officer makes an arrest for a violation of this
16 section, the peace officer is not required to inform the victim of
17 his or her right to make a citizen's arrest pursuant to subdivision

18 (b) of Section 836.